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EXAMINER

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/920,323
Filing Date: August 02, 2001
Appellant(s): MARTIN ET AL.

MAILED

APR 01 2008

GROUP 3600

Phillip J. Arcola
For Appellant

EXAMINER'S ANSWER

This is in response to the corrected appeal brief filed 2/27/2008 appealing from the Office action (Non-Compliant Appeal brief) mailed 2/21/2008.

This is a supplemental Examiner Amendment being necessitated from the "ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER" mailed 2/4/2008 since the earlier Appeal Brief filed on November 27, 2006 was found non-compliant with 37 CFR 41.37 (c) 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows:

(i) The grounds of rejection of claims 1-6, 11-16, 21 and 24-26 under 35 U.S.C. 103 (a) as being unpatentable over US Patent Publication No. 2003/0220867 to Goodwin et al. ("Goodwin") is withdrawn as already stated in the Office action mailed on 11/15/2006.

Following Grounds of Rejection to be Reviewed on Appeal:

(ii) Claims 1-6 and 24 were rejected under 35 U.S.C. 102 (e) as being anticipated, or, in the alternative, under 35 U.S.C. 103 (a) as being unpatentable over US Patent Publication No: 2005/0246266 to Stefanovic et al. ("Stefanovic") and claims 11-16, 21, 25-26 were rejected under 35 U.S.C. 103 (a) as being unpatentable over US Patent Publication No: 2005/0246266 to Stefanovic et al. ("Stefanovic").

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

2005/0246266

STEFANOVIC

3-2005

9) Grounds of Rejection

The following ground(s) of rejection (reproduced from the Second Final Office Action mailed on 3/9/2006) are applicable to the appealed claims:

Quote: "....

3. All references in this Office Action to the capitalized versions of "Applicants" refers specifically the Applicants of record. References to lower case versions of "applicant" or "applicants" refers to any or all patent "applicants." Unless expressly noted otherwise, references to "Examiner" in this Office Action refers to the Examiner of record while reference to or use of the lower case version of "examiner" or "examiners" refers to examiner(s) generally.....

Claim Rejections - 35 USC §102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. §102 that form the basis for the rejections under this section made in this Office Action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351 (a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-6 and 24 are rejected under 35 U.S.C. §102(e) as being anticipated by Stefanovic et. al. (U.S. 2005/0246266 A1)("Stefanovic"). Stefanovic discloses the claimed invention including automatically refreshing an auction parameter ("lot number or identification information") and that the auction parameter is not bid information. In particular [0064] expressly states: "I will be understood that the lot number or lot identification information might be automatically refreshed to the screen of the site terminal (3) as the auction progresses." It is the Examiner's principle position that "lot number" is inherently a sponsor determined auction parameter because it is the auction host who determines the lot number within the auction implementing computer system.

Claim Rejections- 35 USC §103

Art Unit: 3625

7. The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office Action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-6 and 24 are alternatively rejected under 35 U.S.C. §103(a) as being unpatentable over Stefanovic (See MPEP §2112 expressly authorizing alternative § 102/§ 103 rejections when the question of inherency is present in the anticipation rejection.). It is the Examiner's principle position that the claims are anticipated because "lot number" is inherently a sponsor determined auction parameter because it is the auction host who determines the lot number within the auction implementing computer system. However if not inherent, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify Stefanovic to include designating that lot number or identification information as sponsor determined. Such a modification, by allowing only the sponsor to determine lot number, would have allowed the sponsor to prevent duplicate lot numbers and allowed the sponsor to use lot number as a keyed field in the database.

9. Claims 11-16, 21, 25, and 26 are rejected under 35 U.S.C. §103(a) as being unpatentable over Stefanovic. Because claims 11-16, 21, 25, and 26 are not patentably distinct from inventions 1-6 and 24, the patentability of claims 11-16, 21, 25, and 26 stands or falls with the patentability of claims 1-6 and 24.

“
Unquote:

(10) Response to Argument.

Note: Under the head " Argument" the examine has observed following typographical errors and need to be corrected as follows:

Page 5, lines 9-10 recite: “ The rejection of claims 1-6, 11-16, 21 and 24-26 under 35 USC 102 (e) and 103 (a) should be withdrawn” , which should be written ----- The rejection of claims 1-6, and 24 under 35 USC 102 (e) or 103 (a) and rejection of claims 11-16, 21 and 25-26 under 35 USC 103 (a) should be withdrawn.

The Argument portion (see pages 5-6) includes arguments directed to the common limitations in independent claims 1, 11 and 21 and therefore examiner

has directed his response to claim 1 which includes the argued limitations of claims 11 and 21.

The Argument portion (see pages 6-7) includes arguments directed to the common limitations in dependent claims 24, 25 and 26 and therefore examiner has directed his response to claim 24 which includes the argued limitations of claims 25 and 26.

The Appellant argues (Page 5, line 21-page 6, line 6) that in Stefanovic the refreshing does not change the contents of the lot number or the lot identification information during an on-going auction and therefore Stefanovic does not teach determining whether a sponsor determined auction parameter has been changed while the same auction for an item is on-going . Since Appellant does not specifically refer to any claim the examiner will direct his arguments to representative claim 1. In the instant case, claim 1 recites a change in the auction parameter. A change in the lot number, as disclosed in Stefanovic, corresponds to a change in auction parameter in an ongoing auction. The auction process of Stefanovic includes an auction for several lots or items. Whenever there is a change of a lot number in the auction process of Stefanovic this change is determined and conveyed to the auction participant's browser (see at least Fig.4, paragraphs 0056-0057 and 0059-0064). The term "auction" as recited in the claim is not defined to be limited to an auction of one item/lot simply. The term, "auction" is to be accorded to its broadest reasonable interpretation and in Stefanovic the on-going auction process a single action is conducted for multiple lots (see Fig.4, paragraph

0061, "...A screen such as shown in Fig.4 also shows, in its top corner at (25), the status of the auction insofar as all of the bids being placed.....**The server (10) could be programmed to automatically refresh the HTML page (20)...**", paragraph 0064, **"....It is understood that the lot number or lot identification information might be automatically refreshed to the screen of the site terminal (3) as the auction progresses ".**). Therefore, in the event of a change in auction parameter the change is not limited to a change in auction parameter during the auction of a particular lot/item but, the on-going auction process is an auction for various lots one after another and a change in the lot number does correspond to a change in the auction parameter in the ongoing auction process of many lots.

The Appellant further argues (see page 6, lines 9-16) that Stefanovic does not teach determining the change in auction parameter while it is ongoing but determines the change in the lot after the end of auction. The examiner respectfully disagrees because Stefanovic teaches, (see Fig.4, paragraph 0061, "...A screen such as shown in Fig.4 also shows, in its top corner at (25), the status of the auction insofar as all of the bids being placed.....**The server (10) could be programmed to automatically refresh the HTML page (20)...**", paragraph 0064, **"....It is understood that the lot number or lot identification information might be automatically refreshed to the screen of the site terminal (3) as the auction progresses ".**) an auction for multiple lots and automatically refreshing simultaneously lot numbers of the current lot and the next lot (see Fig.4) on the screen during an ongoing auction. The change in lot numbers

correspond to change in auction parameters in the ongoing auction wherein the change in these lot numbers are determined at the web server (10) being used by an auctioneer **(see paragraph 0052 and the auctioneer in Stefanovic corresponds to a sponsor conducting the auction).**

The Appellant argues with respect to claims 24-26 (see Page 6, line 24-page 7, line 7) that lot identification does not change during the auction. The examiner respectfully disagrees because, as analyzed above, the auction process in Stefanovic is a single auction for multiple lots and whenever a current lot closes [***note that the closing of the current lot is not the same as closing of the auction process because the auction process is for multiple lots***] the lot numbers are changed for the current lot and next lot. Further, it is noted that the features upon which Appellant relies (i.e., the ongoing auction is an ongoing auction for one lot) are not in the claim. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

For the above reasons, it is believed that the rejections should be sustained.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

Respectfully submitted,


/Yogesh C Garg/

Primary Examiner, Art Unit 3625

Conferees:


Jeffrey Smith

SPE AU3625

Vince Millin



SPE (Appeal Specialist-Tech Center 3600)